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May 15, 2017

EPA Regulatory Reform Task Force
c/o Sarah Rees
Director, Office of Regulatory Policy and Management
Office of Policy
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW.
Mail Code 1803A
Washington, DC 20460

Submitted to www.regulations.gov Docket ID EPA-HQ-OA-2017-0190

**Re: Comments on Regulations under the Toxic Substances Control Act for
Consideration for Reform under Executive Order 13777 “Enforcing the Regulatory
Reform Agenda”**

Dear Dr. Rees:

The Alkylphenols & Ethoxylates Research Council (APERC) appreciates this opportunity to comment regarding Toxic Substances Control Act (TSCA) regulations for consideration by the EPA Regulatory Reform Task Force under Executive Order (EO) 13777 “Enforcing the Regulatory Reform Agenda”.¹ APERC’s comments specifically relate to a proposed rule for a Significant New Use Rule (SNUR) on certain Chemical Abstract System (CAS) numbers for nonylphenol (NP) and nonylphenol ethoxylates (NPEs) that EPA proposed on October 1, 2014, and we request the Agency’s consideration in repealing this proposed rule as part of these regulatory reform efforts.²

APERC is composed of manufacturers of alkylphenols (APs) and their derivatives, including NP and NPE.³ APERC and its member companies understand the nomenclature,

¹ US EPA. (2017, April 13). Request for Comment: “Evaluation of Existing Regulations”. *Federal Register* Vol. 82, No. 70 p. 17793, EPA-HQ-OA-2017-0190

² US EPA. (2014, October 1). Proposed Rule: Significant New Use Rule on Certain Nonylphenols and Nonylphenol Ethoxylates. *Federal Register*. Vol. 70, No. 190, 59186- 59185

³ Members of the Alkylphenols & Ethoxylates Research Council include: The Dow Chemical Company, Dover Chemical Corporation and SI Group.

chemical and physical properties of this family of chemicals and for over 25 years have conducted and monitored toxicological, environmental fate and ecotoxicity research on NPs and NPEs.

This proposed SNUR identifies certain NP and NPE CAS numbers that the Agency assumed were not in commerce based on their nomenclatures, which were less specific in their description of the branching in the structure of these compounds than other CAS numbers not listed in the proposed SNUR. It was the Agency's understanding that industrially produced NP and NPE have a branched structure. Based on comments submitted to the docket in response to the proposed SNUR the majority of the CAS numbers listed in the Proposed SNUR are in fact in commerce and have been for decades, and regardless of the specificity of their descriptions are viewed synonymously in the market with other CAS numbers not listed in the SNUR. In addition to the outstanding issues regarding nomenclature that have yet to be resolved, there were other deficiencies in the process and justification for the proposed SNUR and as such, this proposed rule is unnecessary and ineffective thereby resulting in costs that exceed benefits.

Despite the fact that the proposed SNUR on certain NP and NPE CAS numbers is not a final regulation, it has regulatory reporting and market implications that impact APERC members companies, their customers and the downstream market. Even as a proposed rule it has the effect of a final regulation in that it triggers export notification requirements under TSCA Section 12(b) for manufacturers and processors. TSCA section 12(b) requires any person who exports or intends to export a chemical substance or mixture to notify the EPA of such exportation if certain actions have been taken under TSCA with respect to that chemical substance or mixture, including "if a rule has been *proposed* or promulgated under section 5 or 6 of TSCA"(emphasis added). Perhaps more importantly, it signals impending regulation under a SNUR to the marketplace, which promotes deselection in the market by companies to avoid the reporting and recordkeeping burden of dealing with chemicals subject to SNURs. Furthermore, these regulatory requirements and market responses have all been triggered without the benefit of a risk evaluation to determine if the compounds pose a risk to human health or the environment.

The Proposed SNUR on certain NP and NPE CAS numbers meets criteria for consideration for reform under EO 13777, particularly since the underlying issue relates primarily to long-standing, complicated and confusing nomenclature and CAS number issues for NP and NPE. EO 13777 established a federal policy "to alleviate unnecessary regulatory burdens". Section 3(a) of the EO directs federal agencies to establish a Regulatory Reform Task Force (Task Force) to evaluate existing regulations and "make recommendations to the agency head regarding their repeal, replacement, or modification." EO 13777 further asks that each

Task Force attempt to identify regulations for regulatory reform that are among other criteria “*outdated, unnecessary, or ineffective*” or “*impose costs that exceed benefits*”.

As discussed below, it is APERC’s view that the proposed SNUR on certain NP and NPE CAS numbers is both *unnecessary* and *ineffective* and even as a proposed rule it *imposes costs that exceed benefits* for regulated entities and for EPA. In addition, other more appropriate cooperative and voluntary approaches could be developed to address nomenclature issues and regulatory frameworks are being developed under the TSCA as amended by the Frank R. Lautenberg Act for Chemical Safety for the 21st Century Act (LCSA) to address inventory updates, and the prioritization and risk evaluation of chemicals.

Proposed SNUR on Certain NP and NPE CAS Numbers is *Unnecessary*

APERC’s original comments in response to the proposed SNUR, which are included as Attachment IA and IB to these comments, provide detailed explanation that this regulation is unwarranted and *unnecessary* for the following reasons: ⁴

- EPA is proposing to use the incorrect authority under TSCA in this proposed SNUR to collect use information about certain NP and NPE CAS numbers; furthermore an initial effort to conduct outreach and communicate with industry would likely have resulted in more useful information with less burden and confusion among the producers, processors and users of the compounds and CAS numbers of interest;
- The method by which EPA evaluated whether the NP and NPE CAS numbers listed in the Proposed SNUR are in use in the US was cursory and did not meet standards of reasonable due diligence necessary to support its consideration under TSCA Section 5(a)(2);
- The majority of the NP and NPE CAS numbers listed in the proposed SNUR are recognized by other EPA Offices, other US and international governmental agencies, and other chemical industry lists and databases; in addition most have been identified as being used in commerce in at least some uses based on comments submitted to the docket;
- Regardless of which nomenclature and CAS numbers are used to describe NP and NPE, the reasoning provided in the proposed SNUR to establish a need for concern about their risk to the environment is insufficient to justify a SNUR; the lack of rigor in EPA’s

⁴ Alkylphenols & Ethoxylates Research Council (2015, January 15). Comments on the Proposed Significant New Use Rule on Certain Nonylphenols and Nonylphenol Ethoxylates published October 1, 2014 Federal Register Vol. 70, No 190, 59186-59185. Docket EPA-HQ-OPPT-2007-0490

reasoning is demonstrated in part by incorrect citation of its own Water Quality Criteria for NP.

APEREC reiterates their original recommendation in response to this proposed SNUR, which is that due to deficiencies in the process used to develop the proposed SNUR and the fact that the majority of CAS numbers listed in the proposed SNUR have been recognized by other Offices within EPA and other governmental agencies and have been reported in stakeholder comments as being used in commerce, EPA should withdraw this proposed SNUR, as it does not meet the requirements for a SNUR. Furthermore, EPA should work to resolve nomenclature issues with NP and NPE not through the use of a “dead chemical” SNUR, but rather through communication with manufacturers and users of these chemicals. In addition, guidance could also be developed that describes how EPA will address reconciliation of chemicals with multiple nomenclature conventions and other nomenclature issues as part of the forthcoming TSCA inventory reset process under the LCSA. This approach will surely assist in addressing the nomenclature and CAS number issues with this chemical family more directly with fewer resources and less monitoring, reporting, and tracking burden on industry and EPA. This approach will also better support the regulatory reform agenda policy to “alleviate unnecessary regulatory burdens placed on the American people”.⁵

Proposed SNUR on Certain NP and NPE CAS Numbers is *Ineffective*

By virtue of the fact that this is a proposed rule – not a final rule - that has not been withdrawn, modified or otherwise resolved for close to 2 ½ years, it is an *ineffective* regulatory instrument. As a proposed rule, it does not function as a SNUR; nevertheless it imposes regulatory reporting requirements for export notifications under TSCA Section 12(b), which also has questionable value. As discussed below there are other more appropriate regulatory and non-regulatory frameworks available– including cooperative dialogue with affected industry stakeholders to resolve nomenclature issues and to understand use patterns of these compounds.

Proposed SNUR on Certain NP and NPE CAS Numbers *Imposes Costs that Exceed Benefits* for Regulated Entities and for EPA

As noted above, even without being a final rule, this proposed SNUR on certain NP and NPE CAS numbers has the effect of a final regulation in that it triggers export notification requirements under TSCA Section 12(b) for manufacturers and processors. This imposes resource burdens and costs for manufacturers and the entire supply chain to track 15 different CAS numbers for NP and NPE. It creates confusion in that only certain CAS numbers for these

⁵ Presidential Executive Order 13777 (2017, February 24). “Enforcing the Regulatory Reform Agenda.” <https://www.whitehouse.gov/the-press-office/2017/02/24/presidential-executive-order-enforcing-regulatory-reform-agenda>

compounds are listed and not others, leading stakeholders to question its relevance to unlisted CAS numbers. It triggers deselection and the costs of unnecessarily reformulating on the part of companies seeking to avoid further reporting and communication obligations in the event the proposed rule is ever finalized. Export reporting under TSCA Section 12(b) also imposes a resource burden on EPA to collect and track the export notifications. The cost of these activities to track, report and react to this proposed SNUR is not balanced by any benefit from the regulation because it is a *proposed* regulation and therefore is not in effect as a SNUR.

Other Regulatory Frameworks Available under TSCA as Amended by the LCSA are More Appropriate than the Proposed SNUR

APERC encourages EPA to evaluate and address any concern about potential risk from these chemicals to human health or the environment by utilizing the forthcoming “framework” regulations that EPA is now finalizing in accordance with the requirements of the TSCA as recently amended by the LCSA. The LCSA was passed with overwhelming bipartisan support, the result of years of negotiation and with input from industry, environment, public health, animal rights, and labor groups. LCSA will protect human health and the environment, support economic growth and manufacturing in the U.S., and promote America’s role as the world’s leading innovator. APERC understands that the three “framework” regulations for a “reset” of the TSCA inventory, for prioritization of chemicals for risk evaluation, and for the performance of risk evaluations, are scheduled to be promulgated in June.

In March 2017, APERC submitted comments to EPA regarding the proposed rule for TSCA Inventory Notification (Active-Inactive) Requirements (i.e., the inventory “reset”), which are provided as Attachment II to these comments. In those comments APERC summarized issues with the nomenclature for NP and NPE, including issues with the proposed SNUR on certain CAS numbers for these compounds, and requested that EPA provide guidance in the Final Inventory Notification Rule regarding notification of chemicals with multiple nomenclatures and other nomenclature issues.⁶ Also, guidance could also be developed that describes how EPA will address reconciliation of chemicals with multiple nomenclature conventions and other nomenclature issues as part of the overall inventory reset process. APERC also recommended that EPA include and describe a “reconciliation” period following the manufacturer and processor notification periods to allow EPA to act fully on information reviewed or collected as part of the reset process and to ensure time to address corrections and errors in notification and other quality assurance measures. APERC also encouraged EPA to consider issuing an interim

⁶ Alkylphenols & Ethoxylates Research Council (2017, March 14). Comments on TSCA Inventory Notification (Active-Inactive) Requirements – Proposed Rule, 82 Fed Reg. 4255 (January 13, 2017), EPA-HQ-OPPT-2016-0426

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enforcement policy, contemporaneously with the inventory reset rule, to clarify that the Agency will not pursue enforcement of good faith efforts to identify nomenclature issues that require resolution subsequent to implementation of the Inventory Notification Rule as well as any good-faith errors in notification. Such a policy will better ensure more open communication in the development of an accurate TSCA inventory.

In addition, after nomenclature issues are resolved for NP and NPE, EPA will have the prioritization and risk evaluation frameworks available under the TSCA as amended by LCSA to assess their risk more appropriately than was attempted in this proposed SNUR for certain NP and NPE CAS numbers. Implementation of these prioritization and risk evaluation rules under the LCSA should be EPA's priority, as they will provide a more effective way to evaluate all chemicals on the TSCA inventory. Elimination of this proposed SNUR will assist EPA in its efforts to focus on implementation of LCSA.

APERC fully supports the Congressional intent of the TSCA as amended by the LCSA and effective implementation of LCSA should remain an Agency priority. In support of this, APERC has offered numerous comments and suggestions to EPA in the regulatory dockets for the proposed frameworks and other LCSA implementing regulations. APERC's comments here are not intended to not detract from those comments or from EPA's ongoing implementation efforts.

Sincerely,



Barbara S. Losey
Director

Attachment IA: Alkylphenols & Ethoxylates Research Council. (01.15.2015). Comments on the Proposed Significant New Use Rule on Certain Nonylphenols and Nonylphenol Ethoxylates dated Oct 1, 2014. Submitted to Docket EPA-HQ-OPPT-2007-0490

Attachment IB: Alkylphenols & Ethoxylates Research Council. (01.15.2015). Tables 1 and 2 to Alkylphenols & Ethoxylates Research Council. (01.15.2015). Comments on the Proposed Significant New Use Rule on Certain Nonylphenols and Nonylphenol Ethoxylates dated Oct 1, 2014. Submitted to Docket EPA-HQ-OPPT-2007-0490.

Attachment II: Alkylphenols & Ethoxylates Research Council. (03.14.2017). Comments on TSCA Inventory Notification (Active-Inactive) Requirements – Proposed Rule, Submitted to Docket EPA-HQ-OPPT-2016-0426.